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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,508	04/02/2004	Brian J. Brown	S63.2N-6769-US06	3146
490 7590 11/17/2008 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
11/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/817,508

**Applicant(s)**

BROWN ET AL.

**Examiner**

Vy Q. Bui

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/30/2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38, 41, 44 and 50-55 is/are pending in the application.  
4a) Of the above claim(s) 50-55 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 38, 41 and 44 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI-108)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of invention shown in Fig. 10 in the reply filed on 8/31/2007 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 38, 41, and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Berry et al-6,231,598 B1.

As to claim 38, Berry-'598 (see Fig. 5, and Fig. 60-61 below) shows first loop containing band 14 (1<sup>st</sup> band) of 1<sup>st</sup> frequency F1 including loops such as loops ABC and CDE, second loop containing band 14 (2<sup>nd</sup> band) of 1<sup>st</sup> frequency F1 including loops such as loop GHI, and third loop containing band 21 (3<sup>rd</sup> band) including loops such as loop EFA of 2<sup>nd</sup> frequency F2 being greater than F1 arranged in a generally circumferential space between 1<sup>st</sup> band and 2<sup>nd</sup> band, and each 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> band extends 360 degrees about the longitudinal axis of the stent substantially as recited in the claims.

Similarly as indicated above for claim 38, as to claim 41, Berry-'598 (Fig. 5, and Fig. 60-61 below) shows first circumferential bands 14 (1<sup>st</sup> band) of frequency F1, second circumferential bands 21 (2<sup>nd</sup> band) of 2<sup>nd</sup> frequency F2 greater than F1, each band extends 360 degrees about the longitudinal axis of the stent and joins one to another to form a stent substantially as recited in the claims.

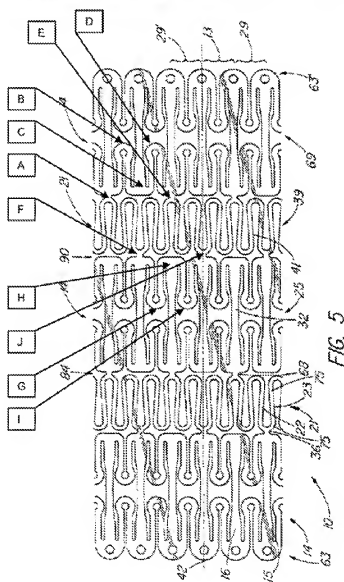
Similarly as indicated above for claim 38, as to claim 44, Berry-'598 (see Fig. 5, and Fig. 60-61 below) shows a stent including first loop containing band 14 (1<sup>st</sup> band), second loop containing band 14 (2<sup>nd</sup> band), and third loop containing band (3<sup>rd</sup> band), each band 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> band extends 360 degrees about the longitudinal axis of the stent and connected one to another as recited in the claim.

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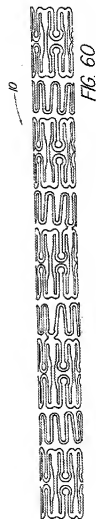
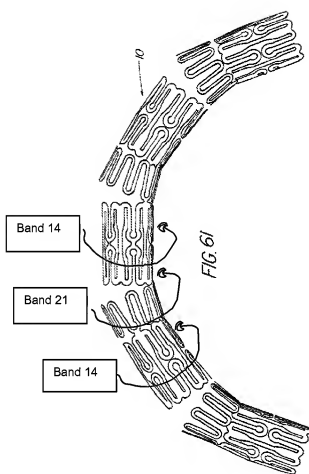


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***Response to Amendment***

Berry-'598 discloses bands 14 of 1<sup>st</sup> frequency and bands 21 of 2<sup>nd</sup> frequency connected one to another to form stent 10 and each bands extends 360 degrees about the longitudinal axis of stent 10 as indicated above (Fig. 60, 61 present the stent having bands 14 and 21 as annotated extending around a longitudinal axis 360<sup>0</sup> to support a tubular blood vessel).

Notice that Fig. 5 shows a partial section of a Berry-'598 stent on a flat surface and Fig. 60-61 show Berry-'598 stent in a tubular working configuration.

The amended claims further define the present invention but still read on the Berry-'598 stent structure as indicated above and therefore unpatentable over Berry-'598.

This "Office Action" is substantially the same as the previous "Final Office Action", except for the reproduced Figs. 5, 60-61 of Berry et al-6,231,598 B1 for the Applicant's reference.

Notice that the Applicant has identified loops, such as loops ABC, CDE, EFA and GHI, as bands in error. The office actions have clearly identified loops, such as loops ABC, CDE, EFA and GHI, as loops of each 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> bands and each band extends 360 degrees around the longitudinal axis of the Berry-'598 stent. Therefore, the Applicant's arguments, which based on the wrong identification of loops as bands are also in error.

### ***Conclusion***

This is a RCE of applicant's earlier Application No. 10/817,508. All claims after amendment are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773